



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**AUDIT REFERRAL # 07-03**

May 22, 2007

**MEMORANDUM**

TO: Thomasenia P. Duncan  
General Counsel

THROUGH: Patrina M. Clark *hmc*  
Staff Director

Margarita Marson *mm*  
Chief Compliance Officer

FROM: Joseph F. Stoltz *JFS*  
Assistant Staff Director  
Audit Division

Thomas Hintermister *TH*  
Audit Manager

Pat Sheppard *PS*  
Lead Auditor

SUBJECT: Friends of Ernest Istook (A05-08) – Referral Matter

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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On May 18, 2007, the Commission approved the final audit report on Friends of Ernest Istook. The final audit report includes matters that meet the criteria for referral to your office:

Finding 1—Receipt of Apparent Prohibited Contributions  
Finding 2—Receipt of Contributions that Exceed Limits  
Finding 3—Personal Use of Campaign Funds  
Finding 4—Misstatement of Financial Activity  
Finding 8—Failure to File 48-Hour Notifications

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Pat Sheppard or Thomas Hintermister at 694-1200.

Attachment:  
Final Audit Report on Friends of Ernest Istook

cc: Lorenzo Holloway

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## **Finding 1. Receipt of Prohibited Contributions**

### **Summary**

FOEI received contributions totaling \$11,825 from corporations, limited liability companies (LLC), and a labor organization. Contributions from unions, corporations and from LLCs that elect to be treated as corporations under IRS rules are prohibited. FOEI untimely refunded \$8,075 of these contributions. In response to the interim audit report recommendation, FOEI provided copies of additional negotiated refund checks totaling \$3,750. FOEI also provided evidence that one of the contributions that had been previously refunded was not prohibited. As a result, the amount of prohibited contributions received by FOEI was reduced to \$10,825.

### **Legal Standard**

**A. Receipt of Prohibited Contributions – General Prohibition.** Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
  - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
  - Labor Organizations;
  - National Banks;
  - Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and
  - Foreign Nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence; foreign governments and foreign political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b)). 2 U.S.C. §§441b, 441c, 441e, and 441f.

**B. Definition of Limited Liability Company.** A limited liability company (LLC) is a business entity recognized as an LLC under the laws of the state in which it was established. 11 CFR §110.1(g)(1).

**C. Application of Limits and Prohibitions to LLC Contributions.** A contribution from an LLC is subject to contribution limits and prohibitions, depending on several factors, as explained below:

1. **LLC as Partnership.** The contribution is considered a contribution from a partnership if the LLC chooses to be treated as a partnership under Internal Revenue Service (IRS) tax rules, or if it makes no choice at all about its tax status. A partnership contribution may not exceed \$2,000 per candidate, per election, and it must be attributed to each lawful partner. 11 CFR §110.1(a), (b), (c) and (g)(2).
2. **LLC as Corporation.** The contribution is considered a corporate contribution—and is barred under the Act—if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are traded publicly. 11 CFR §110.1(g)(3).

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3. **LLC with Single Member.** The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1(g)(4).

### **Facts and Analysis**

FOEI accepted 24 contributions totaling \$11,825 from apparent prohibited sources. Of these, 19 contributions totaling \$7,075 were from corporations, 4 contributions totaling \$3,750 were from LLCs, and \$1,000 was from a local union organization. For those contributions from corporations, the Audit staff verified the corporate status of the entities at the time the contribution was made with the Oklahoma's Secretary of State. For those contributions from LLCs, FOEI could not demonstrate whether the entities were taxed as a corporation or a partnership under the rules of the Internal Revenue Service (IRS). If the entities are treated as corporations by the IRS, their contributions represent prohibited corporate contributions. It should also be noted that FOEI did not establish a separate account for questionable contributions; however, FOEI maintained a sufficient balance in its bank account to refund the prohibited contributions.

This matter was discussed with the treasurer at the exit conference. The Audit staff provided a schedule of the apparent prohibited contributions. In response, the treasurer untimely refunded \$8,075. For the apparent prohibited contributions from LLCs totaling \$3,750, the treasurer provided copies of letters sent to the LLCs requesting that they verify their tax filing status.

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended FOEI take the following action:

- Provide evidence demonstrating that the remaining contributions totaling \$3,750 are not prohibited, or were timely refunded. Such evidence should include documentation indicating their filing status with IRS or copies of the front and back of timely negotiated refund checks; or
- Refund \$3,750 to the contributors and provide evidence of such refunds (copies of front and back of negotiated refund checks); or
- If funds are not available to make necessary refunds, disclose the contributions requiring refunds on Schedule D (Debt and Obligations) until funds become available to make the refunds.

In response to the interim audit report recommendation, FOEI provided copies of additional negotiated refund checks totaling \$3,750. FOEI also provided evidence that one of the contributions that had been previously refunded was not prohibited. As a result, the amount of prohibited contributions received by FOEI was reduced to \$10,825.

## **Finding 2. Receipt of Excessive Contributions**

### **Summary**

A review of contributions from individuals indicated that FOEI failed to timely resolve excessive contributions totaling \$59,100. Most of these excessive contributions resulted from improper redesignations and/or reattributions. FOEI untimely refunded \$57,100 of these contributions. In response to the interim audit report recommendation, FOEI stated

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that they have issued refund checks for remaining \$2,000 and will provide copies as soon as the checks clear the bank.

### **Legal Standard**

**A. Authorized Committee Limits:** An authorized committee may not receive more than a total of \$2,000 per election from any one person. 2 U.S.C. §441a(a)(1)(A) and 11 CFR §110.1(a) and (b).

**B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:

- return the questionable contribution to the donor; or
- deposit the contribution into its federal account and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

The excessive portion may also be redesignated to another election or reattributed to another contributor as explained below.

**C. Redesignation of Excessive Contributions.** The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

Also, the committee may presumptively redesignate the excessive portion of a general election contribution back to the primary election if the amount redesignated does not exceed the committee's primary net debt position.

The committee is required to notify the contributor in writing of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

**D. Reattribution of Excessive Contributions.** When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- the committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by each contributor; or

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- refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- how the contribution was attributed; and
- that the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

### **Facts and Analysis**

A review of contributions from individuals indicates that FOEI failed to timely resolve excessive contributions totaling \$59,100. Of these, FOEI untimely refunded \$7,000 of the excessive amount prior to the audit. It should be noted that FOEI maintained a sufficient balance in its bank account to refund the excessive contributions. Most of the excessive contributions were received prior to the primary election and are excessive for one of the following reasons:

**Contribution by check with two names imprinted-** FOEI failed to timely resolve excessive contributions totaling \$18,600. These contributions were identified as excessive because they were made by a check imprinted with two names and signed by only one of the individuals. In most cases, FOEI attributed the contribution to both individuals whose names are imprinted on the check or designated the contribution to a single contributor for both elections. Such action requires that within 60 days of the contribution, FOEI obtain a signed reattribution or redesignation from the contributors or inform the individuals of how the contribution was presumptively reattributed or redesignated and offer a refund of the excessive portion. FOEI did not provide any records relating to the redesignation or reattribution of these contributions. As a result, the entire amount of the contribution was attributed by the Audit staff to the individual that signed the check.

**Contribution by check with one name imprinted-** FOEI failed to timely resolve excessive contributions totaling \$40,500. These contributions were identified as excessive because they were made by a check imprinted with one name and in most cases were either designated by FOEI to both elections or were attributed by FOEI to two individuals. Such action requires that within 60 days of the contribution, FOEI obtain a signed reattribution or redesignation from the contributors or inform the individuals of how the contribution was presumptively redesignated and offer a refund of the excessive portion. FOEI records did not include a signed redesignation or a signature from the second individual acknowledging them as an accountholder. Records also did not include notification to inform individuals of how the contribution was presumptively redesignated. As a result, the entire amount of the contribution was attributed by the Audit staff to the individual who signed the check.

This matter was discussed with the treasurer at the exit conference. The Audit staff provided a schedule of the excessive contributions. In response, the treasurer untimely refunded \$50,100 and indicated that the excessive portion from two contributors totaling

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\$2,000 was timely refunded or reattributed.<sup>1</sup> However, documentation to support such action taken for the contributions from these two individuals was not provided.

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that FOEI:

- Provide evidence demonstrating that the remaining \$2,000 (\$59,100 - \$50,100 - \$7,000) in contributions were not excessive. Such evidence should include, but not be limited to, documentation that the contributors were notified in a timely manner of the actions taken by FOEI or that the excessive contributions were timely refunded or reattributed; or
- Refund the remaining \$2,000 to the contributors and provide evidence of such refunds (copies of front and back of negotiated refund checks); or
- If funds are not available to make necessary refunds, disclose the contributions requiring refunds on Schedule D (Debt and Obligations) until funds become available to make the refunds.

In response to the interim audit report recommendation, FOEI stated that they have issued refund checks for remaining \$2,000 and will provide copies as soon as the checks clear the bank.

## **Finding 3. Personal Use of Campaign Funds**

### **Summary**

The Audit staff identified expenditures totaling \$8,936 paid by FOEI for what appeared to be personal expenses. Of this amount, the Candidate and the campaign manager reimbursed \$2,615 to FOEI prior to the interim audit report. In response to the interim audit report recommendation, FOEI provided a copy of a negotiated reimbursement check from the Candidate for \$3,189 and a signed statement from the campaign manager acknowledging that expenditures totaling \$1,135 were for his personal use and would be reimbursed to FOEI. For the remaining amount \$1,997 (\$8,936-\$2,615-\$3,189-\$1,135), FOEI provided evidence that the expenditures were not for personal use.

In addition to the amounts above, FOEI identified unauthorized expenditures made by a campaign worker totaling \$30,504 that were paid with campaign funds. The campaign worker was apprehended and prosecuted. The bank partially reimbursed FOEI for checks processed with a false signature. No further comments were provided with regard to this matter.

### **Legal Standard**

**A. Use of Campaign Funds.** Using campaign funds for personal use is prohibited. 2 U.S.C. §439a(b)(1).

**B. Personal Use Defined.** Personal use is defined as any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation, or expense

<sup>1</sup> The remaining \$2,000 in excessive contributions are not eligible to be resolved by sending notifications pursuant to 11 CFR §110.1(k)(3)(ii)(B).

of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. 11 CFR §113.1(g).

Commission regulations list a number of purposes that would constitute personal use *per se*. This includes but is not limited to the use of campaign funds for:

- Household food items or supplies;
- Funeral, cremation or burial expenses;
- Clothing other than items of de minimis value used in the campaign such as T shirts or caps;
- Tuitions payments;
- Mortgage rent or utility payments;
- Admission to sporting events, concerts, theaters, or other form of entertainment unless part of a specific campaign or officeholder activity;
- Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization; and
- Salary payments to a family member (unless the family member is providing bona fide services). 11 CFR §113.1(g)(1)(i).

Where a specific purpose is not listed as personal use, the Commission makes a determination, on a case-by-case basis, whether an expense would fall within the regulation's definition of personal use. Examples of such other uses include:

- Legal expenses;
- Meal expenses
- Travel expenses; and
- Vehicle expenses. 11 CFR §113.1(g)(1)(ii).

**C. Mixed Use.** For those uses of campaign funds that involve both personal use and either campaign or office-holder activity, the committee must maintain a contemporaneous log or other record to document the dates and expenses related to the personal use of campaign funds. The log must be updated whenever campaign funds are used for personal expenses rather than for campaign or officeholder expenses. 11 CFR §113.1(g)(8).

**D. Advisory Opinion 2001-3.** Based on the circumstances presented in Advisory Opinion 2001-3, the Commission ruled that the use of a campaign vehicle for personal purposes that is equal to 5% of the vehicle's annual mileage is *de minimis* and would not require reimbursement to the committee.

### **Facts and Analysis**

**A. Personal Use.** During the review of disbursements, the Audit staff identified expenditures totaling \$8,936 paid by FOEI for what appeared to be personal expenses. The expenditures included items that appeared to constitute personal use *per se* under 11 CFR §113.1(g)(1)(i) and expenses that required a determination on a case by case basis as to whether the expense would fall within the regulation's definition of personal use. Also included are certain personal expenses that were originally paid by FOEI and subsequently reimbursed by the Candidate and campaign manager.

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1. Disbursements totaling \$2,204, for items specifically listed at 11 CFR §113.1(g)(1)(i), constituted personal use *per se*. These expenses included Broadway theatre tickets (\$600) and University of Oklahoma football tickets (\$1,604).
2. Disbursements totaling \$4,117, for items such as meals, travel, and vehicle expenses, required a determination on a case-by-case basis as to whether the expense fell within the regulation's definition of personal use. The Audit staff considered, among other things, the geographic location (the Candidate's home state, Washington, DC, or other locations) where the transactions occurred and the description of the goods or services. Certain expenditures were considered non-campaign related based on the type of expenses and the lack of documentation verifying that they were campaign or officeholder related. Those expenditures requiring a determination on a case-by-case basis are discussed below:

- Between February 13, 2004 and December 31, 2004, FOEI paid \$8,033 for costs associated with a leased vehicle. These costs consisted of the vehicle lease, insurance, maintenance, and fuel. The regulations at 11 CFR §113.1(g)(8) state that when campaign funds are used for expenses involving personal use, as well as campaign-related or officeholder use, a contemporaneous log *or other record* must be kept to document dates and expenses related to the personal use of the campaign funds. While FOEI did not keep a contemporaneous log of the mileage and use of the vehicle, the Committee prepared a log, in response to an exit conference, based on the candidate's day-to-day schedule for the time in question. FOEI acknowledged that it could not document all of the expenses for use of the vehicle, but maintained that it used the vehicle 85% for campaign-related or officeholder activity, and 15% for personal reasons based on the mileage driven. FOEI's calculation included an adjustment for events that were not pre-scheduled and for which the Committee had no supporting documentation.<sup>2</sup> With respect to the 15% vehicle use for personal reasons, FOEI believed that some personal use was permissible as long as it was *de minimis*.

Absent documentation or other pertinent information sufficient to support the 10% added by FOEI for unscheduled campaign-related or officeholder activity, the Audit staff recalculated the vehicle usage as documented for each use. Based on documented usage, the Audit staff determined that the vehicle was used 80% for campaign-related and officeholder activity and 20% for personal reasons. Applying these ratios to the \$8,033 in costs associated with the leased vehicle, the Audit staff concluded that \$1,607 of the costs were for personal use.

With respect to FOEI's understanding that personal use of the vehicle was *de minimis*, the Audit staff concluded that the 15% use of the vehicle for personal reasons was beyond what the Commission has previously considered as *de minimis*.<sup>3</sup>

<sup>2</sup> The Candidate stated: "Because that schedule does not document everything I did on those days—but only those thing which had been scheduled in advance—I have added 10% to those 10,060 documented miles, to allow for those official use/campaign use events that were not pre-scheduled."

<sup>3</sup> See AO 2001-3



- Between December 29, 2003 and January 5, 2004, FOEI paid \$1,861 for costs incurred by the Candidate and his son in connection with a trip to New Orleans for the Sugar Bowl. These costs consisted of airfare (\$1,220), lodging (\$334), car rental (\$161), and meals (\$146). No invoices, receipts, minutes of meetings, agendas, or itineraries were available to document that these expenses were in connection with a campaign or officeholder related event.

The Audit staff discussed these expenses with FOEI at the exit conference and they provided the following response, "A significant campaign fundraiser was planned to take place at the Sugar Bowl game, where the University of Oklahoma and L-S-U were playing for the national title, attracting tens of thousands of Oklahomans to New Orleans. The original plans included a fundraising event or two, fact finding trips to the Port of New Orleans and the nearby commercial and military shipbuilding yards, plus a speaking engagement, with his son ... accompanying him to assist. (These visits were in connection with the Congressman's chairmanship over Customs and shipping issues and government shipbuilding programs.) Arrangements for the fundraising and fact finding portions fell apart at a late date (They were rescheduled and occurred in August.), but the speaking engagement (to a large crowd of Oklahomans) remained."

Absent documentation or other pertinent information sufficient to support that these expenses were for campaign-related or officeholder activity, the Audit staff maintains that these \$1,861 in expenses paid for by FOEI were for personal use.

- Between May 2, 2003 and June 16, 2004, FOEI paid \$649 for various items where no invoices, receipts, minutes of meetings, agendas, or itineraries were available to document that these expenses were in connection with a campaign or officeholder related event. The majority of these expenses were incurred outside the Candidate's home state or Washington, DC. These items included a meal at a New York City restaurant (\$288), airfare to Minneapolis-St. Paul for the Candidate's wife (\$124), computer supplies purchased in Alexandria, Virginia (\$115), gasoline purchased en route to a University of Oklahoma (OU) vs. University of Texas football game (\$35), and flowers purchased in Oklahoma City (\$87).

In its response to the exit conference, FOEI stated that the meal at a New York City restaurant was a fundraising event coordinated with a New York Congressman, but did not provide documentation in support of this fundraiser. Additionally, FOEI conceded that it was unable to locate documentation to support charges for the airfare, computer supplies, and flowers. FOEI stated that the florist charge was evidently made by the campaign manager while the candidate was traveling. Finally, FOEI stated that the gasoline was purchased on a Texas trip for meetings at the OU-Texas game, but did not provide documentation in support of these meetings.

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Absent documentation or other pertinent information sufficient to support that these expenses were for campaign-related and official business, the Audit staff maintains that these \$649 in expenses paid for by FOEI were for personal use.

3. Finally, the Audit staff identified additional disbursements, totaling \$2,615, which were subsequently reimbursed by the Candidate and the campaign manager in response to the exit conference. The Candidate reimbursed FOEI for expenses totaling \$1,597. This included \$760, primarily for charges made (and paid for by FOEI) on the campaign credit card that were also submitted for reimbursement directly to the Candidate and the Candidate's wife. The remaining \$837 were campaign credit card charges (paid for by FOEI) for personal items such as CD's, airfare, department store purchases, jewelry, groceries, gas, and membership fees where the Candidate stated he used the wrong credit card by mistake.

The campaign manager reimbursed \$1,018 for campaign credit card charges (paid for by FOEI) for personal items such as drug store purchases, a studio tour, lodging, dry cleaning, a hair cut, and flowers.

**B. Unauthorized Expenditures.** In November of 2003, FOEI identified unauthorized expenditures made by a campaign worker between October 9, 2003 and November 14, 2003, totaling \$30,504 that were paid with campaign funds. The campaign worker forged campaign checks totaling \$28,012 to himself and various vendors and made unauthorized campaign credit card charges totaling \$2,492. FOEI stated that the campaign worker evidently went into the campaign manager's desk drawer to get the checkbook, and obtained the credit card data from credit card statements that were on the campaign manager's desk. Not all the campaign's losses were detected and reported in time to be reimbursed, although \$21,173 of the bank fraud was reimbursed by First Fidelity Bank because the bank had accepted and processed checks with false signatures. The campaign worker was apprehended, prosecuted, and is currently serving a three-year sentence at an Oklahoma State Penitentiary for embezzlement. Subsequent to this activity, during the review of disbursements, the Audit staff identified additional forged checks totaling \$4,139 to various vendors.

The Audit staff discussed this matter with treasurer at the exit conference and provided schedules of the transactions noted above. In response, FOEI provided copies of cancelled checks, affidavits of unauthorized activity, bank reimbursement documentation, and news articles relating to the embezzlement.

#### **Interim Audit Report Recommendation and Committee Response**

**A. Personal Use.** The Audit staff recommended that FOEI provide evidence that the \$6,321 (\$8,936 - \$1,597 - \$1,018) in expenditures described above were campaign or officeholder expenses and not for personal use. Such evidence was to consist of:

1. invoices, receipts, minutes of meetings, agendas, itineraries;
2. names of organizations that sponsored trips;
3. any other written record which would document the specific campaign or political purpose of the charges; or

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4. additional expense or mileage log documentation showing that the automobile lease was in conformance with AO 2001-3.

Absent such evidence, the Audit staff recommended that the Candidate reimburse \$6,321 to FOEI and provide evidence of the reimbursement (i.e. a copy of the front and back of the negotiated check).

**B. Unauthorized Expenditures.** Since the treasurer stated his intentions to close FOEI in the near future, the Audit staff recommends that FOEI submit any written comments it considers relevant.<sup>4</sup>

In response to the interim audit report recommendation, FOEI provided a copy of a negotiated reimbursement check from the Candidate for \$3,189 and a signed statement from the campaign manager acknowledging that expenditures totaling \$1,135 were for his personal use and would be reimbursed to FOEI. For the remaining amount \$1,997 (\$8,936-\$2,615-\$3,189-\$1,135), FOEI provided evidence that the expenditures were not for personal use. Therefore, the Audit staff concluded that FOEI made expenditures for the personal use of Candidate and campaign manager totaling \$6,939.

#### **Finding 4. Misstatement of Financial Activity**

##### **Summary**

FOEI had material misstatements of reported activity in both years covered by the audit. In 2003, FOEI understated its disbursements. In 2004, FOEI understated its receipts and disbursements. As a result of these misstatements, FOEI also reported incorrect cash-on-hand amounts in both years. FOEI filed amended reports after notification of the audit that corrected the misstatement of receipts in 2004; however, disbursements in both years and cash-on-hand amounts were still misstated. In response to the interim audit report recommendation, FOEI stated that amended reports would be filed by May 31, 2007 to correct the remaining misstatements.

##### **Legal Standard**

**Contents of Reports.** Each report must disclose:

- The amount of cash-on-hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the election cycle; and
- The total amount of disbursements for the reporting period and for the election cycle;
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4), and (5).

##### **Facts and Analysis**

A comparison of reported activity to bank records revealed that FOEI had misstatements in 2003 and 2004. The following outlines the discrepancies for each year and explains misstatements identified during the audit.

<sup>4</sup> In a letter to the Reports Analysis Division filed on November 20, 2006, the Treasurer stated that FOEI was in the process of closing the committee.

<b>2003 Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Opening Cash Balance @ January 1, 2003	\$ 738	\$ 4,470	\$ 3,732 Understated
Receipts	\$928,720	\$939,540	\$10,820 Understated
Disbursements	\$326,648	\$359,270	\$32,621 Understated
Ending Cash Balance @ December 31, 2003	\$602,810	\$584,741	\$18,069 Overstated

### Disbursements – 2003

The understatement of disbursements was the net result of the following:

- **Disbursements Not Reported** + \$25,254  
FOEI did not report fifty payments to vendors that should have been disclosed on their 2003 reports. Of this amount, a single payment to one vendor of \$13,500 for campaign research should have been disclosed on its 2003 Year End Report.
- **In Kind Contributions Not Reported** + 8,555  
FOEI did not report In-Kind contributions received from nine political committees.
- **Disbursements Overstated** - 1,438  
Amount includes two checks totaling \$857 that were erroneously reported twice and three reported amounts totaling \$581 that could not be traced to bank records or FOEI's check register.
- **Incorrect Reported Amounts (Net)** + 250  
Amount includes ten checks where the amounts reported were different from the amount clearing the bank.

**Total Net Understatement of Disbursements** \$32,621

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<b>2004 Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Opening Cash Balance @ January 1, 2004	\$ 602,810	\$ 584,740	\$18,069 Overstated
Receipts	\$ 748,328	\$ 774,430	\$26,102 Understated
Disbursements	\$1,045,317	\$1,050,314	\$ 4,997 Understated
Ending Cash Balance @ December 31, 2004	\$ 305,820	\$ 308,856	\$ 3,036 Understated

### Receipts – 2004

The understatement of receipts was the result of the following:

- **Receipts Not Reported** + \$13,190  
FOEI did not report contributions received from twelve political committees and one Indian nation.
- **In Kind Contributions Not Reported** + 7,323  
FOEI did not report twelve In-Kind contributions received from eight political committees.
- **Incorrect Reported Amount** + 1,500  
FOEI incorrectly reported a contribution of \$2,500 from a political committee as \$1,000.
- **Offsets to Operating Expenditures Not Reported** + 1,273  
FOEI did not report two refunds from vendors.
- **Interest Received from Bank Not Reported** + 1,165  
FOEI did not report the monthly interest received from the money market account.
- **Unexplained Difference** + 1,651

<b>Total Understatement of Receipts</b>	<b>\$26,102</b>
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**Disbursements – 2004**

The understatement of disbursements was the net result of the following:

• <b>Disbursements Not Reported</b>	+ \$91,754
FOEI did not report operating expenditures totaling \$74,754 and contributions to other political committees totaling \$17,000 that were made thru the 30 Day Post-General Report period ending November 22, 2004.	
• <b>Disbursements Overstated</b>	- 95,707
The 2004 Year End ("YE") Report (11/23/04 – 12/31/04) disclosed disbursements totaling \$143,209. The correct amount of disbursements that should have been reported on the YE Report is \$53,491. Therefore, FOEI overstated disbursements on the YE Report by \$89,718 (\$143,209 - \$53,491). FOEI also reported three disbursements in other report periods totaling \$5,989 that could not be traced to the bank or FOEI's check register.	
• <b>In Kind Contributions Not Reported</b>	+ 7,323
FOEI did not report twelve In-Kind contributions received from eight political committees.	
• <b>Incorrect Reported Amounts (Net)</b>	+ 2,754
Amount includes forty-three checks where the amounts reported were different from the amount clearing the bank.	
• <b>Unexplained Difference</b>	- 1,127
<b>Total Net Understatement of Disbursements</b>	<u>\$ 4,997</u>

**Cash-on-Hand**

FOEI misstated cash-on-hand throughout 2003 and 2004 due to the errors described above. On December 31, 2004 the cash balance was understated by \$3,036.

FOEI filed amended reports after notification of the audit that corrected the misstatement of receipts in 2004; however, disbursements in both years and cash-on-hand amounts were still misstated.

The Audit staff discussed this matter with the treasurer at the exit conference. In response, the treasurer stated he would amend the appropriate reports as necessary.

**Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that FOEI file amended reports for 2003 and 2004 to correct the remaining misstatements detailed above and amend its most recently filed report to correct the cash-on-hand balance. In response to the interim audit report recommendation, FOEI stated that amended reports would be filed by May 31, 2007 to correct the remaining misstatements.

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## **Finding 8. Failure to File 48-Hour Notifications**

### **Summary**

FOEI failed to file 48-hour notices prior to the general election for 20 contributions totaling \$26,250. In response to the interim audit report recommendation, the FOEI treasurer provided a statement wherein he attested to the level of importance of the FOEI policy for filing 48 hour notices during the campaign.

### **Legal Standard**

**Last-Minute Contributions (48-Hour Notice).** Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate, including:

- Contributions from the candidate;
- Loans from the candidate and other non-bank sources; and
- Endorsements or guarantees of loans from banks. 11 CFR §104.5(f).

### **Facts and Analysis**

A review of those contributions of \$1,000 or more that were deposited during the 48-hour notice filing period for the general election revealed that FOEI failed to file 48-hour notices for 20 contributions totaling \$26,250.<sup>5</sup> These contributions were from 15 individuals and 5 political committees.

This matter was discussed with the treasurer at the exit conference. The Audit staff provided schedules of the contributions for which 48-hour notices were not filed. In response, the treasurer provided evidence that 48-hour notices for two of the contributions totaling \$2,250 were filed on November 2, 2004, the date of the general election. Since these two notices were untimely filed less than 48 hours before the general election, they are included with the \$26,250 in contributions that do not comply with the filing requirements for 48-hour notices. FOEI provided no further explanation for why the remaining 48-hour notices were not filed.

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that FOEI provide evidence that these 48-hour notices were timely filed or provide any further comments it considered relevant. In response to the interim audit report recommendation, the FOEI treasurer provided a statement wherein he attested to the level of importance of the FOEI policy for filing 48 hour notices during the campaign.

<sup>5</sup> FOEI was inconsistent when recording the receipt date of contributions in their database. Dates entered into the database were the deposit date, the data entry date or the check date. The Audit staff reviewed deposits made during the 48-hour notice period to determine which contributions required a 48-hour notice.